

Gary Peller  
600 New Jersey Avenue, NW  
Washington, DC, 20001  
(202) 662 9122  
*Counsel for Ishmail Sesay*  
and Joanne Yearwood, Appellants

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

	X
<b>In re</b>	:
<b>MOTORS LIQUIDATION COMPANY, et al.,</b>	Case No.: 09-50026 (REG)
<b>f/k/a General Motors Corp., et al.</b>	:
<b>Debtors.</b>	(Jointly Administered)
	X
	X
<b>ISHMAIL SESAY, et al.,</b>	:
<b>Plaintiffs,</b>	Case No.: 1:14-cv-06018 (S.D.N.Y.) (JMF)
<b>v.</b>	:
<b>GENERAL MOTORS LLC, et al.,</b>	:
<b>Defendants.</b>	X

**SE SAY PLAINTIFFS'/APPELLANTS' STATEMENT OF THE ISSUES AND  
DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL**

Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, Ishmail Sesay and Joanne Yearwood, Plaintiffs in their action pending before the United States District Court for the Southern District of New York, 1:14-cv-0618 (JMF), and appellants here (“the *Sesay* appellants”), respectfully submit this statement of issues to be presented on appeal and designation of items to be included in the record. The *Sesay* appellants appeal from the Judgment [Docket No. 13177] entered by the United States Bankruptcy Court for the Southern District of New York *in re Motors Liquidation Company et al*, 09-

50026 (GER), on June 1, 2015, authorizing General Motors LLC's ("New GM") Motion to Enforce the Court's July 5, 2009 Sale Order and Injunction, of General Motors Corporation's assets ("Old GM"); Decision With Respect to *Sesay* Plaintiffs' No Stay Pleading, Denying Relief and Staying *Sesay* Plaintiffs' Actions [Docket No. 12989]; Order Denying *Sesay* Plaintiffs' Relief Requested in Amended No Stay Pleading [Docket No. 12995]; Decision on the Motion to Enforce 2009 Sale Order and Injunction [Docket No. 13109]; and Endorsed Order Denying *Bledsoe*, *Sesay* and *Elliott* Plaintiffs' Request to Respond to Defendant General Motor's Letter Regarding Additional Objections [Docket No. 13161].

**STATEMENT OF ISSUES PRESENTED ON APPEAL**

- 1) Did the Bankruptcy Court err in concluding that it had subject matter jurisdiction to enjoin the prosecution of the *Sesay* appellants' lawsuit against non-debtor New GM, when appellants asserted only direct, non-successor liability claims for injuries caused by breaches of independent, non-derivative duties New GM owed appellants, claims having no conceivable impact on the *res* of debtor Old GM?
- 2) Did the Bankruptcy Court err in enforcing the 2009 Sale Order and Injunction to bar the *Sesay* appellants from pursuing claims involving non-ignition switch hazards, even though they did not have the notice and opportunity to be heard required by the Due Process Clause before they may be precluded from asserting wholly *in personam* and non-successor liability claims against New GM based on its alleged breaches of independent, non-derivative duties?
- 3) Did the Bankruptcy Court err in requiring that the *Sesay* appellants demonstrate prejudice, in addition to a denial of Constitutionally required notice and

opportunity to be heard, in order to be free from preclusion by the 2009 Sale Order and Injunction barring them from pursuing independent, non-derivative claims about which they had no notice or opportunity to be heard prior to the entry of the Order?

4) Did the Bankruptcy Court err in applying its Judgment to the *Sesay* appellants in violation of their Due Process rights, by not according them an opportunity to be heard in the proceedings regarding the issues resolved by the Judgment?

5) Did the Bankruptcy court err by treating counsel representing other parties as representatives of the *Sesay* appellants, and thereby denying appellants their right to be heard under the Due Process Clause?

6) Did the Bankruptcy Court err in construing the 2009 Sale Order and Injunction to encompass the *Sesay* appellants' independent, non-derivative claims against New GM for its own wrongdoing in light of textual and contextual interpretative evidence pointing toward a contrary reading?

7) Was the Bankruptcy Court's construction of the 2009 Sale Order and Injunction to encompass independent, non-derivative claims against New GM for its own wrongdoing unexpected so that even those who received notice of the proceedings would not have had reasonable notice that such claims would be barred?

8) Did the Bankruptcy Court err in exercising personal jurisdiction over the *Sesay* appellants when New GM did not follow the service requirements of the FRBP for initiating an adversary proceeding or a contested matter, and New GM never served its Motion to Enforce on appellants?

9) Did the Bankruptcy Court err in issuing a successive injunction in a contested matter to enforce its earlier injunction?

10) Was New GM's exclusive remedy for enforcing its earlier injunction to seek contempt proceedings against the *Sesay* appellants?

11) Did the Bankruptcy Court overstep its jurisdiction by ordering the *Sesay* appellants to take prejudicial action in their lawsuit pending an Article III Court?

12) Did the Bankruptcy Court overstep its jurisdiction by ordering the *Sesay* appellants to alter their pleadings asserting state law claims pending before an Article III Court?

13) Did the Bankruptcy Court err by applying its 2009 Sale Order and Injunction to bar Ms. Yearwood's claims based on New GM's unsupported assertion that her 2010 model car may contain parts made by Old GM?

**DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

Appellant hereby designates the following items to be included in the record on appeal. Documents under 09-bk-50026 (REG) have been filed with the Bankruptcy Court under the corresponding Bankruptcy Court Docket numbers.

Item #	Date	Bankruptcy Court Docket #	Name
1	06/01/2009	1	Voluntary Petition for Relief Under Chapter 11 of Title 11 of the United States Code
2	06/01/2009	92	Motion to Approve Procedures for Sale of Property
3	06/01/2009	158	Order Granting Debtors Motion for (I) Waiving Requirement to File List of Creditors and (II) Approving Form and Manner of Notifying Creditors of Commencement
4	06/02/2009	274	Order Granting Motion to Approve Procedures for Sale of Property
5	07/05/2009	2967	Decision on Debtor's Motion for Approval of Sale of Assets
6	07/05/2009	2968	Order Authorizing Sale of Property and Granting Related Relief
7	04/21/2014	12619	Groman Plaintiff's Adversary Complaint Against Defendant General Motors LLC
8	04/21/2014	12620	Defendant General Motors LLC's Motion to Enforce the Court's July 5, 2009 Sale Order and Injunction

9	04/21/2014	12621	Cover Page and Exhibits to Defendant General Motors LLC's Motion to Enforce the Court's July 5, 2009 Sale Order and Injunction
10	04/22/2014	12627	Endorsed Order Granting Defendant General Motors LLC's Request for a Conference for Determining Procedures
11	04/22/2014	12629	Objection to Motion of General Motors LLC To Enforce the Courts July 5, 2009 Sale Order and Injunction Filed on Behalf of Plaintiffs Benton, Ratzlaff, Barker, Heuler, McConnell, Onofre, and Satele
12	05/16/2014	12697	Scheduling Order Regarding (I) Defendant General Motors LLC's Motion to Enforce the 2009 Sale Order and Injunction, (II) Objection Filed By Certain Plaintiffs In Respect Thereto, and (III) Adversary Proceeding No. 14-01929.
13	07/08/2014	12764	Order Granting Defendant General Motors LLC's Motion to Establish Stay Procedures for Newly-Filed Ignition Switch Actions
14	07/11/2014	12770	Supplemental Scheduling Order Regarding (I) Defendant General Motors LLC's Motion to Enforce the 2009 Sale Order and Injunction, (II) Objection Filed By Certain Plaintiffs In Respect Thereto, and (III) Adversary Proceeding No. 14-01929.
15	08/01/2014	12807	Defendant General Motors LLC's Motion to Enforce July 5, 2009 Sale Order and Injunction Against Plaintiffs in Pre-Closing Accident Lawsuits
16	08/01/2014	12808	Defendant General Motors LLC's Motion to Enforce July 5, 2009 Sale Order and Injunction Against Monetary Relief Actions, Other than Ignition Switch Actions
17	08/07/2014	12818	Notice of Filing of Sixth Supplement to Schedule 1 to Defendant General Motors LLC's Motion to Enforce Sale Order and Injunction
18	08/07/2014	12819	Notice of Filing of Sixth Supplement to Schedule 2 to Defendant General Motors LLC's Motion to Enforce Sale Order and Injunction
19	08/08/2014	12822	Elliott Plaintiffs' Notice of Objection to Proposed Order and Proposed Counter-Order
20	08/08/2014	12826	Identified Parties' Agreed Upon and Disputed Stipulations of Fact
21	08/22/2014	12870	Sesay Plaintiffs' No Stay Pleading and Motion for Order of Dismissal for Lack of Subject Matter Jurisdiction and Personal Jurisdiction
22	09/02/2014	12877	Endorsed Order Denying Leave to File Sesay Plaintiffs' Combined Pleading
23	09/05/2014	12883	Sesay Plaintiffs' Amended No Stay Pleading and Motion for Order of Dismissal for Lack of Subject Matter Jurisdiction and Personal Jurisdiction
24	09/19/2014	12921	Defendant General Motors LLC's Response to Sesay Plaintiffs' Amended No Stay Pleading
25	10/01/2014	12932	Letter from Arthur Steinberg, Counsel for Defendant General Motors LLC, Requesting the Court Cancel Hearing with Respect to Amended Sesay Pleading

26	10/02/2014	12933	Endorsed Order Granting Defendant General Motors LLC's Request Cancelling Hearing on Sesay Plaintiffs' No Stay Pleading
27	11/05/2014	12981	Defendant General Motor LLC's Opening Brief on Threshold Issues Concerning its Motions to Enforce the Sale Order and Injunction
28	11/10/2014	12989	Decision With Respect to Sesay Plaintiffs' No Stay Pleading, Denying Relief and Staying Sesay Plaintiffs' Actions
29	11/12/2014	12995	Order Denying Sesay Plaintiffs' relief Requested in Amended No Stay Pleading
30	11/11/2014	13001	Transcript Regarding Hearing Held on July 2, 2014, Regarding No Stay Pleadings
31	11/21/2014	13003	Transcript Regarding Hearing Held August 5, 2014, Regarding Elliot Plaintiffs' No Stay Pleading Pursuant to the Courts Scheduling Orders and Motion for Order of Dismissal for lack of Subject Matter Jurisdiction
32	11/24/2014	13004	Sesay Plaintiffs' Notice of Appeal
33	11/24/2014	13007	Sesay Plaintiffs' Motion to Allow Leave to Appeal
34	12/02/2014	13015	Stipulation Order Extending Answer Deadline for Motions for Leave to Appeal Injunctive Orders
35	12/16/2014	13021	Designated Counsel for Certain Pre-Closing Accident Plaintiffs' Responsive Brief on Threshold Issues Concerning Motions to Enforce the Sale Order and Injunction
36	12/16/2014	13025	Designated Counsel for Certain Plaintiffs' Opposition Brief on Threshold Issues Concerning Motions to Enforce the Sale Order and Injunction
37	12/17/2014	13034	Defendant General Motors LLC's Consolidated Objections to the Sesay Plaintiffs' and Elliott Plaintiffs' Motions for Leave to Appeal Preliminary Stay Orders
38	01/13/2015	13044	Administrative Order Regarding Oral Argument and Related Matters
39	01/16/2015	13048	Defendant General Motors LLC's Reply Brief on Threshold Issues Concerning Motions to Enforce
40	01/28/2015	13059	Endorsed Order Granting Defendant General Motor LLC's Proposed Oral Argument Sequence
41	01/30/2015	13066	Endorsed Order Regarding Defendant General Motors LLC's Letter Requesting Approval of Argument Sequence and Time Allocation
42	02/13/2015	13086	Defendant General Motors LLC's Notice of Matters Scheduled for Hearing on February 17, 2015
43	04/15/2015	13111	Decision on the Motion to Enforce Sale Order
44	05/12/2015	13136	Letter from Arthur Steinberg, Counsel for Defendant General Motors LLC, Regarding Proposed Judgment in Connection to Decision on Motion to Enforce Sale Order
45	05/12/2015	13137	Letter from Edward S. Weisfelner, Counsel for Certain Plaintiffs, Enclosing Proposed Judgment of Co-Designated Counsel and Counsel for Economic Loss Plaintiffs and Designated Counsel and Counsel for Ignition Switch Pre-Closing Accident Plaintiffs

46	05/13/2015	13143	Letter from Gary Peller, Counsel for <i>Bledsoe, Sesay and Elliott</i> Plaintiffs, Requesting Scheduling for Submission of Non-Threshold Issue Objections
47	05/15/2015	13147	Endorsed Order Regarding Letter from Gary Peller, Counsel for <i>Bledsoe, Sesay and Elliott</i> Plaintiffs, Instructing Defendant General Motors LLC to Respond
48	05/21/2015	13153	Letter from Arthur Stenberg, Counsel for Defendant General Motors LLC, Responding to Letter from file by Gary Peller
49	05/21/2015	13154	Letter from Gary Peller, Counsel for <i>Bledsoe, Sesay and Elliott</i> Plaintiffs, Requesting Leave to Respond to Mr. Steinberg's Letter Regarding Non-Threshold Issue Considerations
50	05/27/2015	13161	Endorsed Order Denying <i>Bledsoe, Sesay and Elliott</i> Plaintiffs' Request to Respond to Defendant General Motor's Letter Regarding Additional Objections
51	05/27/2015	13162	Decision Regarding Form of Judgment
52	05/27/2015	13163	Order Regarding Technical Matters Concerning Judgment
53	05/29/2015	13169	Letter from Gary Peller, Counsel for <i>Bledsoe, Sesay and Elliott</i> Plaintiffs, Regarding Court's Order Regarding Technical Matters Concerning Judgment
54	05/29/2015	13171	Letter from Arthur Steinberg, Counsel for Defendant, Regarding Court's Order Regarding Technical Matters Concerning Judgment
55	05/29/2015	13174	Letter from Arthur Steinberg, Counsel for Defendant General Motors LLC, Requesting Provision Staying Certain Appellate Procedures Until Second Circuit Certification
56	06/01/2015	13176	Letter from Arthur Steinberg, Counsel for Defendant General Motor LLC, Responding to Letter filed by Gary Peller Regarding Technical Matters of Judgment
57	06/01/2015	13177	Judgment
58	06/01/2015	13178	Order Certifying Judgment for Direct Appeal to Second Circuit
59	06/01/2015	13180	Sesay Plaintiffs' Amended Notice of Appeal

Dated: June 15, 2015

Respectfully submitted,

*/s/ Gary Peller*

Gary Peller  
Counsel for Ishmail Sesay and  
Joanne Yearwood, Appellants.  
600 New Jersey Avenue, NW  
Washington, DC, 20001  
(202) 662 9122  
peller@law.georgetown.edu